

Section 230 shields TikTok in child's "Blackout Challenge" death lawsuit

Mourning mom can't beat Section 230 by "creatively labeling" claims, judge says.

ASHLEY BELANGER - 10/27/2022, 3:05 PM

As lawsuits continue piling up against social media platforms for allegedly causing harms to children, a Pennsylvania court has ruled that TikTok is not liable in one case where a 10-year-old named Nylah Anderson died after attempting to complete a "Blackout Challenge" she discovered on her "For You" page.

The challenge recommends that users choke themselves until they pass out, and Nylah's mother, Tawainna Anderson, initially claimed that TikTok's defective algorithm was responsible for knowingly feeding the deadly video to her child. The mother hoped that Section 230 protections under the Communications Decency Act—which grant social platforms immunity for content published by third parties—would not apply in the case, but ultimately, the judge found that TikTok was immune.

By signing up, you agree to our [user agreement](#) (including the [class action waiver and arbitration provisions](#)), our [privacy policy and cookie statement](#), and to receive marketing and account-related emails from Ars Technica. You can unsubscribe at any time.

TikTok's "algorithm was a way to bring the Challenge to the attention of those likely to be most interested in it," Judge Paul Diamond [wrote in a memorandum](#) before issuing his order. "In thus promoting the work of others, Defendants published that work—exactly the activity Section 230 shields from liability. The wisdom of conferring such immunity is something properly taken up with Congress, not the courts."

This is not the only lawsuit attempting to hold TikTok liable for the deaths of children from the "Blackout Challenge." [Other lawsuits filed this summer in California](#) are still pending, but these make similar arguments regarding TikTok's allegedly defective algorithm. Diamond suggested that Nylah's mother "cannot defeat Section 230 immunity" simply "by creatively labeling her claims." His judgment suggests that those other pending lawsuits won't fare any better in overcoming the effective shield that Section 230 grants social media companies as publishers, no matter the outcome of how algorithms are designed to recommend content.

"Because Anderson's design defect and failure to warn claims are 'inextricably linked' to the manner in which Defendants choose to publish third-party user content, Section 230 immunity applies," Diamond wrote.

Anderson's lawyers at Jeffrey Goodman, Saltz Mongeluzzi & Bendesky PC, provided Ars with a statement on the ruling:

"The Anderson family will continue to fight to make social media safe so that no other child is killed by the reckless behavior of the social media industry. The federal Communications Decency Act was never intended to allow social media companies to send dangerous content to children, and the Andersons will continue advocating for the protection of our children from an industry that exploits youth in the name of profits."

TikTok did not immediately provide Ars with a statement on the ruling.

Although this verdict is likely considered a big loss to child safety advocates, the law firm Seeger Weiss LLP recently announced that it's "pioneering a novel approach to litigation against social media companies that sidesteps protections provided by Section 230." The law firm said it has filed dozens of lawsuits where it's already representing more than 1,000 clients—and [is still seeking more clients](#)—“who allege the design of social media platforms causes serious harm to children, including anxiety, depression, eating disorders, sexual exploitation, and suicide.” A much broader effort seeking accountability beyond just TikTok, these lawsuits also target other social platforms from Meta and Snap.

Seeger Weiss LLP didn't immediately respond to Ars' request for comment to clarify how effective its "novel approach" could be in actually defeating Section 230 protections, given this week's ruling in favor of TikTok.

Negating Anderson's claims that TikTok has a responsibility not to design its algorithm to recommend dangerous content to children, Diamond, in his ruling, quoted the 2nd Circuit in finding that “tools such as algorithms that are designed to match information with a consumer's interests” are “well within the range of publisher functions covered by Section 230.”